

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding

PP Docket No. 93-253

COMMENTS OF  
IOWA NETWORK SERVICES, INC.

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## **SUMMARY**

Iowa Network Services, Inc. ("INS") hereby submits its comments on competitive bidding for personal communications services ("PCS") licenses. INS is an Iowa public utility providing centralized equal access, interexchange long distance telephone services, calling card service and enhanced voice messaging services. INS is owned by approximately 130 independent local exchange carriers. INS has constructed a 900 mile fiber optic network and deployed a 16,000 trunk access tandem and signalling transfer point in Des Moines, Iowa, to deliver centralized equal access with common channel signalling.

INS agrees with the Commission's proposal to set aside Channel Blocks C and D for bidding by small businesses, rural telephone companies or businesses owned by women or minorities. The Commission has the legal authority to advance the interests of small businesses and rural telephone companies as a class. Indeed, Congress intended these designated entities to participate in the provision of PCS, and only by ensuring that some of them receive licenses may this goal be achieved.

INS recommends that in defining what constitutes a rural or small telephone company, the Commission employ appropriate definitions. The Commission's proposal to define rural telephone companies in terms of a cable programming rule excludes too many telephone companies that are rural service providers. A better definition is one that the Commission already has under consideration. Rural telephone companies are companies whose local exchanges serve places with populations of 10,000 or fewer persons.

Likewise, small telephone companies should be defined under existing Commission rules as those with 50,000 or fewer access lines and annual operating revenues under \$40 forty million. Alternatively, the Small Business Administration definition of a small communications provider as one with under 1,500 employees is also reasonable.

INS recommends that consortia composed wholly of rural telephone companies or small businesses be allowed to bid upon Channels C and D, and that they be permitted to aggregate the spectrum of the two channels. Businesses which are not designated entities should not be allowed to participate in bidding upon Channels C and D because Congress did not intend them to be accorded special consideration. If small or rural telephone companies can bid as consortia they may be better able to attract capital. Small or rural telephone companies will increase their chances of operating a successful PCS business in the long run by pooling their limited resources to achieve the economies of scale necessary for success.

INS recommends that the Commission, when defining which businesses owned by women or members of minority groups are allowed to bid upon the set-aside channels, adhere to the language of the statute and accord preferences only to those where women or members of minority groups possess at least 50.1 percent equity ownership in an applicant. Anything less is not true ownership. It may constitute some participation by members of these groups, but it is not actual ownership. In fact, if the Commission allows applicants which provide only some participation to women and minorities, it

will lessen the chances of obtaining licenses for those applicants who are actually owned and controlled by members of these groups.

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COMMENTS OF  
IOWA NETWORK SERVICES, INC.

Iowa Network Services, Inc. ("INS"), by its attorneys and pursuant to Section 1.415(b) of the Commission's rules, respectfully submits comments as requested by the Commission in its Notice of Proposed Rulemaking ("NPRM") released October 12, 1993, in the above-captioned proceeding.<sup>1</sup>

I. PROCEDURAL HISTORY

On September 23, 1993, the Commission announced the authorization of new personal communication services ("PCS") in the 2 GHz emerging technologies band.<sup>2</sup> Personal communications services are wireless telecommunications services designed to allow a customer to communicate via a special handset regardless of where the customer is located. PCS will allow transmission of voice, data and video communications services, and is expected to launch the next era in mobile telecommunications services.

<sup>1</sup> Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-253, FCC 93-455, 8 FCC Rcd \_\_\_\_\_ (released October 12, 1993).

<sup>2</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, FCC 93-451, 8 FCC Rcd \_\_\_\_\_ (released October 22, 1993) (hereinafter referred to as the "PCS Order").

The Commission divided license allocations into channel blocks of 10, 20 and 30 MHz of spectrum, divided by the Rand McNally major trading areas ("MTAs") and basic trading areas ("BTAs"). The divisions are as follows:

<u>Channel Block</u>	<u>Frequency (MHz)</u>	<u>Service Area</u>
A (30 MHz)	1850-1865/1930-1945	MTA
B (30 MHz)	1865-1880/1945-1960	MTA
C (20 MHz)	1880-1890/1960-1970	BTA
D (10 MHz)	2130-2135/2180-2185	BTA
E (10 MHz)	2135-2140/2185-2190	BTA
F (10 MHz)	2140-2145/2190-2195	BTA
G (10 MHz)	2145-2150/2195-2200	BTA <sup>3</sup>

The Commission will allow licensees to aggregate these blocks in groups of up to 40 MHz in any one service area, but without geographic limitation for market aggregation. It may or may not be technically feasible to aggregate blocks operating on different frequencies. A licensee will be required to offer personal communications services to at least one-third of the population in each market area within five years of receiving its license, to two-thirds of the population in each market area within seven years of being licensed and to ninety percent within ten years.

In its NPRM, the Commission requested comments on how applicants should bid for licenses in the personal communications services markets, how to accord preferences to designated entities such as small businesses, rural telephone companies and businesses owned by women or minorities, and for comments on permitting group bidding.

As far as combination bidding is concerned, the Commission plans to accept bids both for licenses individually and for all the

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<sup>3</sup> PCS Order, at ¶ 56.

geographic licenses in the block. Group bids would be submitted as sealed bids, and then individual license auctions would be conducted orally. Sealed group bids would be opened after the oral auction. If the sum of the individual bids are greater than the highest bid for the group, licenses would be awarded individually.

The Commission proposed to permit group bidding to award all of the 51 MTA licenses on each of two 30 MHz spectrum blocks A and B. The Commission requested comment on whether it should accept sealed group bids for all BTA licenses on an MTA basis and conduct an oral auction sequentially for individual BTA licenses. The Commission will also consider in this rulemaking proceeding whether group bidding should be permitted to aggregate 10 MHz PCS licenses in 20 MHz or 30 MHz blocks.

The Commission seeks comment on setting aside blocks of spectrum for competitive bidding by small businesses, rural telephone companies, and businesses owned by women or minorities, and is also seeking comment on how such businesses are to be defined.<sup>4</sup> In order to ensure that small businesses, rural telephone companies, and businesses owned by women or minorities have an opportunity to compete, the Commission will consider whether it should set aside Block C, a 20 MHz BTA block, and Block D, a 10 MHz BTA block, for these designated entities.<sup>5</sup> The Commission also proposed that qualifying bidders for the 20 MHz block be allowed to pay for their licenses over time, and that their qualifying deposit be less than that required by entities

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<sup>4</sup> NPRM, at ¶ 121.

<sup>5</sup> Id.



that are not small businesses, rural telephone companies, or businesses owned by women or minorities.<sup>6</sup>

## II. IOWA NETWORK SERVICES, INC.

INS is an Iowa public utility providing centralized equal access, interexchange long distance telephone services, calling card service and enhanced voice messaging services. INS is owned by approximately 130 independent local exchange carriers, commonly referred to as participating telephone companies or PTCs. INS has constructed a 900 mile fiber optic network and deployed a 16,000 trunk access tandem in Des Moines, Iowa, using a type of LATA equal access system ("LEAS") technology and software for presubscription. INS has upgraded its network with common channel signaling facilities, including a signaling transfer point. INS provides both interLATA and intraLATA equal access to the 276 PTC exchanges, which are located primarily in small towns and the more rural areas of Iowa. More than 150,000 rural subscribers are served by these exchanges. They are among the few consumers in the entire country that presently have a choice of interexchange carriers to carry their "1+" intraLATA telephone calls, as well as their "1+" interLATA calls.

INS established its centralized equal access network in order to achieve competition in long distance services in small rural communities in Iowa. Prior to the implementation of centralized equal access, only AT&T offered "1+" interLATA toll service in the PTCs' exchanges; and other interexchange carriers did not ask that

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<sup>6</sup> Id.

the PTCs implement equal access.<sup>7</sup> In light of the relatively low amount of toll traffic generated by each of the small exchanges, the interexchange carriers did not find it worth the trouble and expense of installing their own facilities to the PTCs.<sup>8</sup> The Iowa State Utilities Board reported that, at the time of INS' Section 214 application for authority to implement its proposed network, only 17.5% of all exchanges in Iowa received originating interLATA toll service from an interexchange carrier other than AT&T.<sup>9</sup> In order to speed the availability of high quality, competitive services to small towns and rural areas, the FCC authorized INS' network.<sup>10</sup>

The local exchanges of the participating telephone companies are rural. Almost all of the participating companies operate exchanges serving places with populations of 10,000 people or less, and a significant number serve populations under 5,000 persons. Indeed, the populations served by some local exchanges number in the hundreds. The communities that the participating telephone companies serve are agricultural, possessing numerous farms and ranches.

INS holds experimental licenses for personal communications services. The INS participating telephone companies plan to bid on the licenses the Commission will offer through its proposed

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<sup>7</sup> Iowa Network Access Division, 3 FCC Rcd 1468 ¶ 3 (Common Carrier Bur. 1988).

<sup>8</sup> Id.

<sup>9</sup> Id. at 1469 ¶ 11.

<sup>10</sup> Id. at 1474 ¶ 38.

auction. Each of the local exchange carriers which make up INS propose to provide PCS in their local exchanges. Additionally, there is the possibility that the participating telephone companies will combine to form a consortium, composed of rural and small telephone companies, to bid on groups of licenses.

INS requests that the Commission define rural telephone companies as telephone companies whose local exchanges serve places with populations of 10,000 or fewer persons. Additionally, in determining what constitutes a small business for purposes of being eligible to bid upon set-aside channels, INS requests that the Commission define a small telephone company as one with 50,000 access lines or less, or, alternatively, as one with fewer than 1,500 employees. INS also requests that the Commission adhere to the language of the legislation in defining the types of businesses which it would consider owned by women or minorities so as to avoid the pitfalls that arose in the broadcast license context. Specifically, INS requests that only companies which are "owned," in the sense that women or minorities have a majority equity stake in the enterprise, be allowed to participate in bidding on spectrum set aside for small businesses, rural telephone companies or businesses owned by women or minorities.

INS is uniquely positioned to provide a vehicle for consortium bidding, either on a state, regional or national basis. Each of its local exchange carriers could bid on its own for separate BTAs in Iowa or they could bid as part of a consortium for the Iowa BTA service territories. To that end, INS has the following comments. INS requests that the Commission adopt Commissioner Barrett's

suggestion that consortia be allowed enhancements for rural participation.<sup>11</sup> Because INS' local exchange carriers are rural telephone companies, any consortium that they form should receive enhancements for and be allowed to bid upon any spectrum set aside for small businesses, rural telephone companies or businesses owned by women or minorities. Additionally, any consortium applicants for Channels C and D should be composed entirely of designated entities. This means, also, that the Commission should allow rural telephone companies to bid on licenses for Channels C and D outside their own service areas.

**III. THE COMMISSION SHOULD SET ASIDE CHANNELS C AND D FOR BIDDING BY RURAL TELEPHONE COMPANIES, SMALL BUSINESSES, OR BUSINESSES OWNED BY WOMEN OR MINORITIES**

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The Commission proposes to set aside Channel Block C<sup>12</sup> and Channel Block D for bidding by designated entities composed of small businesses, rural telephone companies or businesses owned by women or minorities.<sup>13</sup> The Commission proposes to allow the designated entities to use installment payment plans, with interest, for bids within the set-aside blocks.<sup>14</sup> The FCC seeks comment on this proposal, on whether to allow the installment plan

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<sup>11</sup> PCS Order, (Dissenting Statement of Commissioner Andrew C. Barrett at 4).

<sup>12</sup> INS plans to request reconsideration in Gen. Docket 90-314 of the size of the Channel C set-aside. Thirty megahertz in Channel C is necessary for technical feasibility and economic viability. Even if the Commission allows aggregation of spectrum, an applicant attempting to bid upon both Channels C and D may still find itself with significant holes in its coverage at the end of an auction.

<sup>13</sup> NPRM, at ¶ 121.

<sup>14</sup> Id.

preference to be used by designated entities who bid upon channel blocks that are not set aside for the designated entities exclusively and whether to provide tax certificates to designated entities, without regard to the channel block on which they bid.<sup>15</sup>

INS agrees that the Commission should set aside at least 30 MHz of spectrum for qualifying applicants who fit the appropriate definitions. This would allow small businesses, rural telephone companies, and businesses owned by women or minorities to proceed on more of an equal footing against those obtaining not only an MTA's worth of coverage but 30 MHz of spectrum. Not only is 30 MHz required for purposes of fairness, but 30 MHz is required to ensure seamless service, efficiently and economically. INS also agrees that installment payment plans and tax certificates would foster participation by designated entities in the provision of PCS.

A. The Commission has the Legal Authority to Set Aside Channels C and D for Rural Telephone Companies and Small Businesses

Section 309(j) of the Communications Act, as recently enacted by Congress, mandates that in determining eligibility for licenses, the Commission shall promote the following objectives:

economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;....<sup>16</sup>

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<sup>15</sup> Id.

<sup>16</sup> Pub. L. 103-66, Title VI, 107 stat. 312.

To this end, the Commission proposes to set aside two channel blocks of spectrum nationwide, one of 20 MHz at Block C and one of 10 MHz at Block D, reserved for bidding by small businesses, rural telephone companies, and businesses owned by minorities or women. These designated entities would thus only bid against each other.

In order to disseminate licenses to such a wide variety of applicants, the Commission's proposed set aside of Channels C and D offers a guarantee that small businesses, rural telephone companies or businesses owned by minorities or women will acquire licenses. Because these are not the types of business that attract capital readily, merely allowing them to participate in the auction process without any safeguards does not guarantee that they will receive licenses as Congress requires.

Some concern has been expressed that the Commission does not have the legal authority to set aside Channel C for small businesses, rural telephone companies or businesses owned by women or minorities. To the extent that these concerns are based on the statements of individual members of Congress, they are unavailing. Statutory language may not be expanded or contracted on the basis of the statements of individual legislators.<sup>17</sup>

In any event, the legislative history as a whole supports the Commission's proposed set aside of Channel C. The House Bill explains that "the Commission is also required to prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas;

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<sup>17</sup> West Virginia University Hospitals, Inc. v. Casey, 111 S. Ct. 1138, 1147 (1991).

economic opportunity for a wide variety of applicants, including small businesses...."<sup>18</sup> Moreover,

The Conference Agreement also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.<sup>19</sup>

Legislative history such as this only highlights what is already apparent from the language of the statute: namely, that without a portion of the spectrum set aside for small business and rural telephone companies, the Commission cannot ensure the participation of a wide variety of applicants.

Alternative payment systems or tax certificates alone will not accomplish the goals of the statute. Small businesses and rural telephone companies might never be able to attract the kind of capital necessary to bid against the deep pockets of the large industry players if they do not have spectrum set aside for them. For the Commission to attempt to attract investors through economic incentives of some sort is too speculative to ensure compliance with the statute's directive. For the Commission to determine the amount of incentives necessary to attract investors would require a great deal of speculation on the part of the Commission as to the climate of the investment market and the future interests of investors. And even if the Commission produced a package attractive enough to encourage investors to back small businesses

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<sup>18</sup> H. R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess.

<sup>19</sup> Id. (emphasis added).

or rural telephone companies, there would still be no guarantee that the requisite wide variety of applicants would be awarded licenses. At best, financial incentives make participating in an auction more attractive. But such incentives are not a means of ensuring participation in the provision of PCS.

The only way to guarantee that result is to set aside a block of spectrum, as the Commission proposes to do, and allow small businesses, rural telephone companies, and businesses owned by women or minorities to bid against each other. This will result in bidding by businesses on roughly equal footing. The likelihood of a small number of businesses always bidding for the best spectrum diminishes.<sup>20</sup> Tax certificates and alternative payment systems may be designed as safeguards against the failure of these PCS providers, but they cannot by themselves ensure the participation of these same businesses.

**B. The Commission's Definitions of Who Qualifies  
for Set-Aside Channels Should Reflect the  
Realities of Rural Areas and Small Businesses**

The Commission requested comment on defining the various designated entities. INS' participating telephone companies are both rural telephone companies and small businesses. The Commission proposes to define rural telephone companies by cable rules, specifically, as those telephone companies serving

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<sup>20</sup> To the extent that certain minority or women owned businesses have proven highly successful and have ready access to the capital necessary to finance such a venture, this statement is not completely true. Also, INS imagines that certain large businesses may attempt to augment existing spectrum by entering into agreements with minority or women owned applicants to bid, BTA by BTA, for set aside spectrum.



populations of 2,500 or less.<sup>21</sup> Section 63.58 defines a rural telephone company as one whose service area contains no incorporated or unincorporated place of 2,500 persons or more.<sup>22</sup> The Commission admitted that it had a pending request to modify that definition to those serving markets of 10,000 or less, but gave no indication of when it planned to rule on that proposed change. The Commission is considering defining small businesses as those with a net worth of no more than \$6.0 million and with after tax income for the two preceding years not in excess of \$2.0 million. Alternatively, an applicant may qualify as a small business by showing that it meets industry size standards.

INS submits that an appropriate definition of a "rural telephone company" is a telephone company whose local exchanges serve places of 10,000 or fewer persons.<sup>23</sup> Likewise, a telephone company is a small business if it has 50,000 or fewer access lines and annual revenues from regulated telecommunications operations of less than \$40 million, or fewer than 1,500 employees.

1. Rural Telephone Companies Operate Exchanges  
Serving Fewer Than 10,000 Persons

The Commission requested comment on employing a definition of rural in the PCS proceeding that it currently uses in the context of cable services.<sup>24</sup> The Commission proposes to limit rural

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<sup>21</sup> 47 C.F.R. § 63.58.

<sup>22</sup> Id.

<sup>23</sup> Indeed, figures of 20,000 inhabitants or more have been suggested to describe rural telephone service areas. Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781, 5854 (1992); OPASTCO Issue Paper, Cable TV, February 1992.

<sup>24</sup> NPRM, at ¶ 77.

telephone companies eligible for preferences to those rural companies who are now permitted to provide cable video programming in their own service areas: namely, only those rural telephone companies which provide telephone service to places of 2,500 or fewer persons.<sup>25</sup> INS submits that if a telephone company's service area contains no incorporated or unincorporated place of more than 10,000 persons, the Commission should consider that telephone company a rural telephone company.

Reliance on the 2,500 person population threshold is inadvisable. It was intended originally, not to define rural telephone companies, but only those rural telephone companies small enough to merit an exemption to the general prohibition against telephone companies providing cable programming in their own service areas. In any event, the 2,500 threshold is currently under review and, if it changes, may change for good reasons but too late for the purposes of this proceeding. Section 63.58 should not serve to define rural telephone companies for purposes of PCS bidding.

In July 1992, the Commission proposed to raise the population threshold for purposes of providing video programming from 2,500 to 10,000 persons.<sup>26</sup> The fact that the proposed increase is under consideration is relevant to this proceeding. If the Commission stakes its definition of rural on 47 C.F.R. § 63.58, and that definition changes after the PCS lottery, the Commission will have

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<sup>25</sup> 47 C.F.R. § 63.58(a)(1).

<sup>26</sup> Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

determined that a "rural" area contains more than 2,500 persons, and it will have made that determination for good reasons, but it will have done so too late for numerous rural telephone companies to benefit from it. Accordingly, INS requests that the Commission not tie its definition of what constitutes a rural telephone company to an old definition of rural, and to a definition which is, in fact, relevant more to the cable context than to the provision of PCS service.<sup>27</sup>

Additionally, the very reasons that lead the Commission to consider raising the threshold from 2,500 to 10,000 persons show that areas more populated than envisioned by Section 63.58 are, in actuality, rural areas. The fact that these areas do not have enough population to attract commercial enterprises provides evidence that a definition based on a figure of 2,500 excludes many companies that would normally be considered rural. In the cable proceeding, the Commission cited "a significant number of households with no access to" cable programming.<sup>28</sup> Indeed, the Commission projected that "many areas currently unserved are likely to remain unserved for this decade, if not indefinitely."<sup>29</sup>

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<sup>27</sup> The Commission should bear in mind that although it has been argued that Congress provided the Commission only limited discretion in determining which rural telephone companies qualify for the rural cable exemption, the statute governing PCS does not contain similar limitations. Accordingly, there is no need for the Commission to limit itself to the truncated definition of existing Section 63.58.

<sup>28</sup> Second Further Notice of Proposed Rulemaking, 7 FCC Rcd at 5856 ¶ 152.

<sup>29</sup> Id.

Likewise, the major long distance carriers showed a significant lack of interest in the areas served by INS' participating telephone companies. The reason INS had to be created highlights the rural attributes of those same telephone companies. When the Commission instituted equal access in the 1980's, none of the long distance carriers requested that these local exchanges provide equal access capabilities.<sup>30</sup> The low amount of traffic generated at each of the small exchanges did not make it worth the while of the interexchange carriers to provide facilities to these small rural exchanges.<sup>31</sup> In other words, the parts of Iowa served by the PTCs were too sparsely populated to attract the attention of interexchange carriers.

These kinds of experiences highlight the rural nature of the PTCs' service areas. Indeed, the Commission itself understands that by any ordinary definition INS' participating telephone companies serve rural customers.<sup>32</sup>

2. Small Telephone Companies Should be Defined in the Context of the Telecommunications Industry

The Commission proposed to define small businesses pursuant to the definition devised by the Small Business Administration

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<sup>30</sup> Iowa Network Access Division, 3 FCC Rcd at 1468 ¶ 3.

<sup>31</sup> Id. at 1468 ¶ 3.

<sup>32</sup> Iowa Network Access Division, 3 FCC Rcd at 1468-1474 (referring to INS services areas as rural); Remarks by Cheryl A. Tritt, Chief, Common Carrier Bureau, 29th Annual OPASTCO Convention, July 21, 1992 (released July 23, 1992) (referring to Bob Halford "who helped make Iowa Network Services a reality for 150,000 rural Iowans.") (emphasis added).

("SBA").<sup>33</sup> To reach this conclusion, the Commission relied on a report prepared by the Small Business Advisory Committee to the Federal Communication Commission.<sup>34</sup> According to the SBAC Report, the SBA defines a small business as one with a net worth not in excess of \$6.0 million with average net income after Federal taxes for the two preceding years not in excess of \$2.0 million.<sup>35</sup> A business may also be defined as small if it meets the size standard for the industry in which it is primarily engaged.<sup>36</sup> The SBAC Report, the Commission noted, questions whether the net worth and income size standard is appropriate for the telecommunications industry.

INS believes that the SBA net worth and income size standard is not appropriate, and that the Commission should rely on its own rules because the Commission's rules better reflect the telecommunications industry. Specifically, INS recommends that for purposes of qualifying for a set-aside channel, a small business which is a telephone company should be defined as one which meets current Commission standards. The Commission defines small telephone companies for purposes of filing tariffs as any local exchange carrier with annual revenues from regulated

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<sup>33</sup> NPRM at ¶ 77 n.51.

<sup>34</sup> Report of the FCC Small Business Advisory Committee to the Federal Communication Commission Regarding Gen. Docket 90-314, (Sept. 15, 1993) (subsequently referred to as "SBAC Report").

<sup>35</sup> Id. at n. 51.

<sup>36</sup> Id.

telecommunications operations of less than \$40 million, and 50,000 or fewer access lines.<sup>37</sup> Most of INS' PTCs meet this definition.

Alternatively, INS considers acceptable the SBA's size standard for the telephone industry as defined at 13 C.F.R. § 121.601. According to the SBA's Standard Industrial Classification, a telephone communications provider is considered small if it has fewer than 1,500 employees.<sup>38</sup> Most of the INS participating telephone companies have fewer than this number of employees and INS considers this definition satisfactory.

#### IV. RURAL OR SMALL BUSINESS CONSORTIA SHOULD BE ALLOWED TO BID ON CHANNELS C AND D TOGETHER

The FCC asked whether consortia that include designated entities among their members should be eligible for preferential measures when they bid for spectrum generally, and, if they are eligible for preferences, whether they should receive the same investment incentives as would be available to other eligible designated entities.<sup>39</sup> INS supports the Commission's proposal to allow consortium participation in PCS, and recommends that the Commission credit consortia on the basis of their constituent members rather than on the basis of their qualifications in the aggregate. More specifically, INS requests that the definition of "rural" encompass any bids by an INS consortium on the basis of the status of the members of that consortium. The access lines, annual revenues, employment and populations served by the members of a

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<sup>37</sup> 47 C.F.R. §§ 61.39(a), 69.602(a)(3).

<sup>38</sup> 13 C.R.R. § 121.601, No. 4813.

<sup>39</sup> NPRM, at ¶ 78.

consortium should not be aggregated when determining the eligibility of a consortium to bid on licenses for Channels C or D.

In INS' case, the consortium participants would be rural or small telephone companies. Consortia seeking to bid upon Channels C and D should be wholly composed of designated entities. Also, INS agrees both that applicants should be allowed to aggregate spectrum, and designated entities should be allowed to bid on more than one channel at once in order to obtain 30 MHz.

Commissioner Barrett recognized the need for consortia in the context of bidding upon MTAs.<sup>40</sup> He stated that he would support enhancement credits for including, among others, rural telephone companies in any consortia established.<sup>41</sup> He believes that small businesses would have a better chance of surviving in a consortium, "than if they are licensed to compete only as a single, standalone BTA inside an MTA."<sup>42</sup> INS agrees with Commissioner Barrett that designated entities should receive some sort of enhancement credit for bids on channel blocks other than Channels C and D. Such a regimen would increase opportunities for participation by designated entities in the economically attractive 30 MHz MTA blocks.

INS also requests that the Commission allow rural and small telephone companies the option of acting in concert to bid upon Channels C and D, and to aggregate the two channels. This is

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<sup>40</sup> PCS Order, (Dissenting Statement of Commissioner Andrew C. Barrett at 4).

<sup>41</sup> Id.

<sup>42</sup> Id.

especially important in light of the Commission decision to fragment the spectrum and geographic regions available so that designated entities lack sufficient spectrum with which to work. If technically feasible, aggregation would allow designated entities to provide PCS on an economically competitive basis. Smaller and rural telephone companies may need to pool their resources to obtain the capital necessary to finance an economically viable block of spectrum. As part of a statewide consortium, INS' members would have access to greater technical and financial support, and economies of scale not available if they were to try to enter this new market individually. An INS consortium would be able to offer personal communications services to the citizens of Iowa sooner and more efficiently; and it would be able to offer Iowa innovative portable telecommunications with statewide access. The local companies of which INS is comprised would continue to own and control their own businesses.

An INS backed consortium makes sense for the participating telephone companies. These rural telephone companies have already once banded together in order to form INS in its roles both as a provider of centralized equal access and as a long distance network. Past experience shows that the participating telephone companies can do business with each other and reach accord on an operational basis. A PCS consortium would provide the added advantage of allowing interconnection on a technical basis as well as provide the support of INS. These advantages would allow the participating telephone companies to enter the wireless personal



communications market, and remain economically viable providers of local telephone service to the small towns and rural areas of Iowa.

Because the consortium approach is economically attractive, and because each of the participating rural telephone companies would continue to own and control its own operations, INS requests that the Commission allow consortia bidding on Channels C and D so long as a consortium's participants meet the Commission's definition of rural telephone companies, small businesses, or companies owned by women or minorities. Any concern that a consortium is no longer a small business or a rural telephone company should be disregarded. The consortium structure allows each constituent business to retain control of its own operations. Although a rural or small telephone company may be acting in concert with other telephone companies, it does not lose its rural status or cease being a small telephone company. Accordingly, the Commission should determine whether a consortium should receive designated entity status, not on the basis of the size or status of the consortium, but on the basis of the status of its constituent members.

Also, in order to allow consortium bidding in the set-aside channels, the Commission should allow rural telephone companies to bid for licenses outside their service areas. This would avoid the administrative delays and inconvenience of trying to match BTAs and telephone service areas when the fact of the matter is that BTAs and telephone service areas do not have the same boundaries. No similar restriction is proposed for other designated entities. Such a restriction is unwarranted and inconsistent with the